

Rocky Flats Coalition of Local Governments

Boulder County City and County of Broomfield Jefferson County
City of Arvada City of Boulder City of Westminster Town of Superior

Rocky Flats Coalition of Local Governments Board Meeting Minutes

Monday, May 3, 2004

8:30 - 12:00 p.m.

Mt. Evans Room in the Terminal Building
Jefferson County Airport, Broomfield

Board members in attendance: Gary Brosz (Director, Broomfield), Lori Cox (Alternate, Broomfield), Mike Bartleson (Alternate, Broomfield), Lorraine Anderson (Director, Arvada), Clark Johnson (Alternate, Arvada), Jane Uitti (Alternate, Boulder County), Sam Dixon (Director, Westminster), Ron Hellbusch (Alternate, Westminster), Michelle Lawrence (Director, Jefferson County), Nanette Neelan (Alternate, Jefferson County), Karen Imbierowicz (Director, Superior), Devin Granbery (Alternate, Superior), Amy Mueller (Alternate, City of Boulder), Hank Stovall (*Ex-officio*).

Coalition staff members and consultants in attendance: David Abelson (Executive Director), Kimberly Chleboun (Assistant Director), Rik Getty (Technical Program Manager), Barb Vander Wall (Seter & Vander Wall, P.C.), Jennifer Bohn (Financial Consultant).

Members of the Public: Dave Shelton (Kaiser-Hill), John Corsi (Kaiser-Hill), Lane Butler (Kaiser-Hill), Frazer Lockhart (DOE), Joe Legare (DOE), Karen Lutz (DOE), Norma Cataneda (DOE), Laurie Shannon (USFWS), Andrew Todd (USFWS), Mark Aguilar (EPA), Edgar Ethington (CDPHE), Steve Gunderson (CDPHE), Marion Galant (CDPHE), Shirley Garcia (Broomfield), Al Nelson (Westminster), Patricia Rice (RFCAB), Bob Nelson (Golden), Jeanette Alberg (Senator Allard), Doug Young (Rep. Udall), Dan Chesshir (RFSOIU #1), Phil Cruz (RFSOIU #1), Darryl Dubrovin (RFSOIU #1), Chuck Miller (USWA Local 8031), Ron DiGiorgio (USWA Local 8031), Roman Kohler (Rocky Flats Homesteaders), Alisha Jeter (Broomfield Enterprise), Richard Valenty (Colorado Daily), Paula Elofson-Gardine (EIN), Erin Hamby (RMPJC).

Convene/Agenda Review

Chairwoman Karen Imbierowicz convened the meeting at 8:35 a.m. The Coalition audit was postponed until June as the auditor was not able to make this meeting.

Business Items

1) Motion to Approve Consent Agenda - Lorraine Anderson motioned to approve the consent agenda. Gary Brosz seconded the motion. The motion passed 6-0 (Boulder County was not yet present).

2) Executive Director's Report - David Abelson reported on the following items.

- David is going to Washington, D.C this week to discuss primarily the Coalition's FY05 funding and Rocky Flats orphan waste.
- David has been subpoenaed for the Cook case, a class action lawsuit against Rocky Flats by local

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land owners. David is being represented by House counsel as a former staff member of Rep. David Skaggs and they are working to limit deposition which is scheduled for May 18th. Additionally, David is working with Barb Vander Wall on the subpoena request for Coalition documents.

- David provided copies of all of the Coalition governments' letters to USFWS regarding refuge planning, along with letters of interest from other local agencies and organizations.
- David provided copies of Kaiser-Hill's response to Coalition questions regarding the Building 991 fire. He stated Kaiser-Hill just released a very large report on the incident. Jane Uitti reviewed the Kaiser-Hill response, and said she was more interested in understanding where there was a slip in following procedure. David said she may be able to find that information in the report's Executive Summary. Joe Legare said DOE is also publishing a lessons-learned document that he would send to the Coalition.
- DOE modified the contract with Kaiser-Hill, increasing the range for fee opportunity since there had been a dispute over the true value of the contract. David had emailed staff with details previously.
- Rep. Udall agreed to tour the Rocky Flats site with the authors of Ambushed Grand Jury in order to scope out possible areas of contamination previously undetected. However, the authors pulled out. Doug Young confirmed that Rep. Udall had attempted to respond to the author's requests by: 1) requesting EPA and CDPHE to review claims in the book to determine if there was new information; 2) requesting access to Department of Justice (DOJ) documents from the grand jury investigation; and, 3) arranging a tour of the Site. Doug stated Jacque Brever said that she would not be able to tour the Site for at least six months due to upcoming surgeries. Later in the meeting Doug also confirmed that Rep. Udall had just received confirmation that DOJ would open non-classified grand jury files to EPA and CDPHE to determine if there is anything onsite that has escaped investigation.

Public Comment

There was no public comment at this time.

Buffer Zone Sampling and Characterization

Lane Butler (Kaiser-Hill) explained the Site's basis for doing characterization and how it fits in with overall Site sampling. First, Lane explained that the purpose for characterization is to understand the distribution and location of contaminants and define the areas requiring remediation. Current characterization will also support the Comprehensive Risk Assessment (CRA). The sample plan statistical framework is designed to minimize errors (Type 1 Error is the failure to remediate when necessary, Type 2 Error is remediating when no remediation is necessary). Lane showed a graph which illustrates how uncertainty is reduced and confidence improves with the number of samples taken. The typical confidence range based on EPA guidance is 80% - 95% and the Site is sampling at a 90% confidence level. Lane emphasized that there is a point at which significantly increasing the number of samples will not significantly reduce the uncertainty as you will never get 100% certainty no matter how

many samples are taken.

Lane presented a map showing sitewide sampling locations and the following numbers:

- Total sample locations 10,718
 - Industrial Area 4,741
 - Buffer Zone 5,977
- Total number of samples 134,937
- Total number of analyses 419,443
- Total number of analytical records 5,916,445

An analytical record is the individual analyte being tested for.

Lane then reviewed how the characterization program is designed, implemented, and made meaningful. First, historical information is considered, including an intense investigation of the Historical Release Report, sixteen remedial investigations between 1986 and 1995, and a comprehensive review of the Buffer Zone for disturbed sites by CDPHE. These CDPHE reviews occurred in 1999 and again in 2003, and consisted of aerial photograph review and site walk downs.

Next, the sampling and analysis plans are designed in a consultative process with EPA and CDPHE. The plans use standard EPA guidance to ensure appropriate sampling methods and data quality, and are reviewed and approved by EPA and CDPHE. These two agencies also review and approve existing data, individual sampling addenda, and identify additional sampling requirements. The plans take a conservative sampling approach and include biased, grid, and geostatistical approaches.

Sample acquisition and analysis then takes place, again with Kaiser-Hill and RFCA party oversight. Samples are collected, labeled, and tracked with proper chain-of-custody, and field samples are sent to an onsite laboratory run by a subcontractor for characterization analysis. Confirmation analysis is done by nine EPA audited and approved, independent, offsite labs. All of these labs are audited annually by the Analytical Services Division and follow EPA approved methods and guidelines.

Six million data points provide opportunity of error, either through procedures, human performance, or equipment. Thus, data quality assurance practices run throughout the characterization process: sample planning, sample collection, sample management, lab analysis, lab reporting, data management, and data evaluation. Validation is somewhat random, with 25% of the data going through QA/QC, but Kaiser-Hill is working toward electronic validation of 100% of the data.

The last step is regulatory review and approval of final decisions. The RFCA parties review and

approve the data sets, final data supporting decision documents, and then the final decision documents.

Lane also reviewed independent oversight and consideration of past disposal practices which are taken into account throughout the characterization process. Independent oversight included the CDPHE radiological survey, citizen sampling of off-site areas for the Health Advisory Panel, independent sampling by EPA and CDPHE, and the previously mentioned CDPHE Buffer Zone studies. All of these findings were consistent with Site data. Lane discussed the historical active disposal options that were open and said with all these options there was no reason to use anything other than these sites for disposal. Also, these sites were open pre-RCRA and did not have many limitations as to what was accepted. He clarified that the Original Landfill was used primarily for construction debris.

Lane finally described the sampling for the CRA. Data adequacy Phase I is designed to provide broad data coverage, confirm the assumption that the Buffer Zone is uncontaminated, and identify areas requiring targeted sampling. Data adequacy Phase II will review all existing data and sample to fill data gaps. Lane further explained that in sampling the Rocky Flats site they work upon the assumption of "guilty until proven innocent" for areas of known contamination, and sampling is statistically designed for a 90% confidence level. However, this type of statistical approach does not work in areas where contamination is non-homogenous (such as a landfill), or for the outer Buffer Zone as they believe it is clean based on historical evidence.

Jane Uitti referred to the sampling map which shows five samples, one in the middle and four in each corner, per 30-acre grid. She questioned the practice of compositing these samples and how the Site would determine an elevated reading. Jane cited the RAC study recommendation which stated soil samples should not be composited and also suggested a 95% confidence level. Lane said there is no cutoff number at this time but they would look for red flags, and in Phase II none of the samples would be composited. Joe Legare (DOE) said it is difficult to dilute a plutonium sample since it is long-lived, and can also be adjusted for in the lab by counting decays. Karen Imbierowicz asked how many samples would have to be taken in the Buffer Zone to reach 90% certainty. Lane said the Buffer Zone sampling is not statistically based and is not technically required or required by guidance, but they felt it a reasonable approach.

Gary Brosz asked numerous questions about independent verification and quality assurance for field sampling, detecting radiation in the Buffer Zone, and precision of sampling. Lane explained that subcontractors taking samples are frequently observed by RFCA party field personnel and the process of collecting is audited. The highest potential for error in the field is not in collecting samples but in pinpointing the sample location and matching samples with survey locations using GPS. Sampling plans are designed to look for windblown contamination in a large disbursement, not a single point source. There were some flyover studies which confirmed the layout of the 903 Pad area; the instruments they used detect gamma emitters very well but alpha emitters are more difficult as they are self-shielding. Steve Gunderson (CDPHE) also described in detail the Buffer Zone investigations performed by the State. Mark Aguilar (EPA) clarified that when EPA and CDPHE do their additional sampling it is for quality assurance, not independent verification. He said the EPA will take an

additional five samples from the area of the highest reading in each of the Site's eleven exposure units, and these samples will not be composited. The samples will go to the EPA lab in Alabama. Hank recommended the RFCA parties refer to the RAC study's sampling protocols. He also asked if the exposure units stand on their own with a 90% confidence level as he is concerned about diluting results. Lane said he believes when everything is considered under the CRA the data should lead to a 95% confidence level. Joe clarified that the CRA is conservative in making sure all the separate accelerated actions meet the requirements of the bigger picture.

Sam Dixon asked about a hotspot north of the South Interceptor Ditch identified by Coalition and local government staff from a Site map. Rik Getty said he is working to get better clarity on the source of the sample and its location. Paula Elofson-Gardine asked about remediation of the contamination plume going east toward Indiana. Lane said the windblown area east of the 903 Pad is being remediated to below 50 pCi/g, with depth being determined as they sample. Gary said it appears no samples are being taken in that eastern area, and Lane said it is because there has already been extensive sampling done there. Gary said he trusts the RFCA parties and Kaiser-Hill after working with them, but they must still address public mistrust and public perception. He stated he would like to address the issue of independent verification and an independent sampling plan, especially for the refuge area, at a future Coalition meeting. Steve agreed there is value in having independent peer review, but suggested the Board consider over the next few months how an independent assessment could best add value from a technical, public perception, and economic standpoint. The Board then discussed the concepts of public perception, political maneuvering, available funds, and scientific basis for an independent review. David reminded the Board it is difficult to define the ubiquitous "public" as has been seen in the soil action level and refuge discussions. He suggested they instead consider how they could best have confidence as a Board and as elected officials responsible to constituents in determining the appropriate independent review. Gary raised the issue of deciding what would be discussed at Board meetings and to what level of detail, and the Board agreed to move this conversation to the Round Robin.

Kaiser-Hill Fee and Relationship to Safety Performance and Scope of Work

Joe Legare (DOE) gave a presentation on the relationship between the fee paid to Kaiser-Hill, safety performance, and scope of work. The presentation was in response to concerns raised by Board members that Kaiser-Hill may be rushing to closure in order to earn a larger incentive bonus at the expense of worker safety. Joe began by drawing a triangle on the board titled, "Total Project Performance", with the words "safety", "scope", and "cost" on each corner. He said the contract with Kaiser-Hill is structured so that each of these parameters is dependent on the others; breaches in safety will impact cost and schedule because of work stoppage. Joe also briefly summarized what goes into each of these parameters, such as good project management, operational readiness reviews, innovation and efficiency. He noted that penalties are a smaller piece of the overall picture, with less of an impact on cost and more of an impact in damaging Kaiser-Hill's reputation and ability to garner future contracts.

Joe then reviewed the objectives of the 1996 Rocky Flats Cleanup Agreement (RFCA) and described how the 2000 closure contract between DOE and Kaiser-Hill was negotiated to deliver the RFCA commitments. RFCA objectives, both achieved and planned, include the following:

- Ultimate removal of weapons useable fissile material targeted for no later than 2015 (all materials were removed by summer 2003).
- Waste management activities will include on-site treatment, retrievable storage and disposal, and off-site disposition (nearly all treatment and disposal issues resolved, with small quantity of treatment and disposal orphans continuing to be worked).
- All surface water on-site and all surface and groundwater leaving RFETS will be of acceptable quality for all uses (points of compliance defined, groundwater treatment systems installed, comprehensive Industrial Area groundwater approach and post-closure monitoring being discussed).
- Environmental monitoring will be maintained for as long as necessary (post-closure monitoring requirements are being identified, and responsibility will be retained by DOE-LM).
- All contaminated buildings will be decontaminated as required for future use or demolition; unneeded buildings will be demolished (currently in progress as described by Decommissioning Program Plan and specific Decommissioning Operating Plans).
- Weapons useable material and transuranic (TRU) wastes will be safely consolidated into the smallest number of buildings to reduce operating costs and shrink the security perimeter (all weapons useable material offsite, all TRU waste anticipated to be off site in less than a year, security perimeter fence removed).

Joe also summarized how cleanup activities have been conducted in a manner to reduce risk, be cost effective, protect public health, protect reasonably foreseeable land and water uses, and prevent adverse impacts to ecological resources, per the RFCA. The RFCA also stipulated that the environmental cleanup be accomplished to protect and support open space uses in the Buffer Zone and limited industrial uses as noted in the Future Site Use Working Group report. Since then the Site has been designated a national wildlife refuge.

Joe explained that the closure contract is intended to achieve physical completion and is for a given scope, not a given time period or cost. The contract requires delivery of draft regulatory completion documents, but DOE is responsible for regulatory closure and will provide regulatory closeout with the State and EPA. Completion criteria in the contract address: removal of buildings; environmental remediation; removal of wastes; use of closure caps; building foundations and other structures at least three feet below final grade; on- and off-site surface water quality. Joe also noted that Kaiser-Hill signed up to a work scope with many unknowns at the time.

Joe then went back to the relationship between safety, schedule, cost and fee, and explained how the contract is written for total project performance. The previous contract was a production model. It is apparent this new contracting mechanism works well as Rocky Flats is at or near the top in DOE for safety performance, delivery of scope, management of costs, and meeting commitment dates. Other DOE sites are switching from the production model to this newer contract model.

Joe next explained how the fee incentive works. The target cost is \$3.96 billion and the target schedule is December 12, 2006. The cost and schedule incentives to Kaiser-Hill include:

- 30% of savings, with limit of total project cost at \$3.2 billion
- 30% of overrun as a reduction, with limit of total project cost at \$4.8 billion
- Up to \$20 million for a finish by March 31, 2006
- Up to \$20 million reduction for a finish by March 31, 2008

Additionally, there are Environment, Safety, and Health penalty provisions for incidents and trends, with up to six months of ordinary fee payments reduction for poor performance.

Joe said some issues related to the cleanup approach and end-state were not defined by RFCA or the contract and have required further discussion, such as final cleanup levels, the opening date for WIPP, the field interaction between Kaiser-Hill and the RFCA parties, how to package the special nuclear materials, and precisely defining open space uses. In summary, Joe stated that every RFCA objective is being met or exceeded, and there are direct and indirect consequences of safety performance as a component of total project performance. He emphasized that the cleanup approach requires a consultative process with regular oversight from the regulators and an ongoing dialogue with the community.

Karen Imbierowicz asked about the timeline for the post-closure Integrated Monitoring Plan, and Joe said they are starting out with a conceptual framework and are deciding if the document will be part of the post-closure RFCA. The post-closure IMP will be developed substantially over the summer. Lorraine Anderson asked how DOE ensures that the integrity of their relationship with Kaiser-Hill and the cleanup contract are maintained. Joe responded that DOE is responsible for elements of the contract as well, including fiduciary responsibilities, providing waste receiver sites, and safety management. DOE also implements an independent assessment program to decide where they need to focus and how to direct Kaiser-Hill. Additionally, the DOE Rocky Flats Project Office reports to DOE EM as another piece of checks and balances. Lorraine noted this contract is far different in scope from the prior operating contracts with previous contractors such as Dow Chemical and Rockwell, and she asked if he saw a difference in how the contract is being managed to prevent the same problems. Joe said yes, he did see a difference, and he provided two examples. The fee structure is not a qualitative analysis at the end of the year, but instead the contract is more self-regulating and they constantly know where they stand. He noted that DOE defined the work and then Kaiser-Hill negotiated on the cost. The schedule works in the same way, with Kaiser-Hill using a business approach and having more freedom to sequence work as they see fit and put resources where they can do the greatest good.

Gary Brosz asked if the level of fee and bonus is relatively typical of a government contract of this magnitude. Frazer Lockhart (DOE) described the history of how the contract was negotiated and explained that a typical fee for a project with similar work and complexity is 9-12.5% of total project cost. The original average fee negotiated was over 8%, with a possible high end of 11.5-12% and low end of 3.5-4%. The recently negotiated contract has a potential high end of 14% and low end of 2%.

Round Robin

As requested at the February 23rd Board meeting, David summarized highlights of the Coalition's March visit to Washington, D.C. He said they heard overwhelming support for continued Coalition funding as well as plans from the Senate Armed Services Subcommittee staff for moving the Coalition forward. David noted another major accomplishment was in getting a verbal commitment from Jessie Roberson that the Site will not be considered regulatory closed until all orphan waste is offsite. David is now working with staff from Senator Allard and Rep. Udall's offices to get this commitment in writing. Gary Brosz said he recollected Jessie making a similar commitment regarding completion of the MOU. David said the issue of the MOU also depends on DOE general counsel and not solely Jessie. David also noted the difficulty he had in getting appointments, but he said this is a good sign since it means committee staff do not feel it urgent to meet on Rocky Flats issues as things are going well.

The Board then discussed the issue of the timing of Board meetings. David said it is difficult to gauge how much discussion a presentation will generate, but he works with the Executive Committee to determine appropriate agenda items and the time allotted for each. He said he is at a loss as to how to structure meetings differently without clear direction from the elected officials, although flexibility is always important. Karen Imbierowicz said it is important to be respectful of people's time, and Lorraine agreed saying she appreciates a chair who keeps a meeting on schedule as she does not want to make the meeting longer. Michelle Lawrence said if items cannot fit within the allotted time then perhaps there should be fewer agenda items as she cannot afford longer meetings either. Sam Dixon suggested keeping agendas as they are and continuing discussions to the next Board meeting if needed.

Gary said there are too many items on the agenda and he almost detects encouragement of keeping the Board at a low level of involvement. He then stated he has spent time meeting with his staff researching issues and has found there are many unresolved questions, such as sampling, that have been on staff radar for over two years but are still unresolved. He said the current Coalition mechanism and process is not resolving key issues and he would like to create a structure that will get these issues nailed such as a master issues list with priorities, cataloging, and weights. David responded that he is hearing a Catch-22 problem: Board members want fewer issues on the meeting agenda, but want to discuss more issues further in-depth.

Lorraine suggested that Broomfield make a presentation to the Board when there is more time to review their ideas for process. Amy Mueller said Shaun McGrath had similar questions about Coalition process and she suggested this conversation be moved to the next Board meeting. Jane Uitti added that local government staff receives many informative emails from Coalition staff and she wondered if elected officials have this same format for receiving information. Sam said she likes to hear questions as they come up during a presentation, not later as it is possible to lose track of issues if not discussed when presented. The Board then discussed how information is disseminated and discussed between Coalition staff, local government staff, and Board Directors.

Gary said his staff, Shirley Garcia, had put together a list of open issues which numbered over 80 running issues being tracked. He said there was no list of issues within the Coalition, and he suggested a similar list be used for the Board. Sam agreed saying she loved his matrix, and over the years many questions have still not been answered within time limits because they just sat there. Lorraine asked Gary if he would share his list with the rest of the Board, and he replied that would be working backwards like the tail wagging the dog. David said Coalition staff had seen Shirley's first draft, and Lorraine suggested staff analyze the issues and determine what is important for the communities as a whole. Gary said as elected officials it is important to make sure staff is tracking the issues with this level of discipline as he has not seen a rigorous level of discipline in tracking issues prior to this.

David reviewed the processes that determine what the Board will focus on, such as the yearly strategic planning process, the Big Picture, the Executive Committee, staff meetings, and regular communication with the Site and local government staff. He explained that up until this point the Board had directed him to work first with local government staff to filter issues. Currently Coalition staff is reviewing

every Coalition recommendation ever made in order to determine consistency and running Board concerns. David noted that he had assumed this analysis would be very detailed and more appropriate for staff than for the Board, but if the Board has now decided it wants to change Coalition process then it should provide clear direction. Karen directed Gary to release the Broomfield matrix to the rest of the Board so that the Board can review it before this topic is discussed further at the next Board meeting.

Public Comment

Paula Elofson-Gardine (EIN) said the Coalition exists in order for the local governments to provide a united front in dealing with Rocky Flats issues and should be about tracking DOE accountability. She said if questions do not get answered it is necessary to raise them over and over, and that is how citizens originally got the FBI involved. She also referred to the issue of public perception over cleanup and stated the cleanup standard is not safe and the public should not be wooed to recreate there. She also said there is a disconnect between soil and vegetation sampling as the vegetation samples recently presented were pulled from old data. She is concerned about prescribed burning. She is also concerned that Buffer Zone sampling will miss many hot spots. Paula is curious why there is such resistance to getting a new aerial gamma survey to confirm contaminant migration as most nuclear facilities perform one every five years. She also complained about the public not being afforded the opportunity for better interaction during the presentations while the presenters are still in attendance.

Erin Hamby (RMPJC) thanked the Board for discussing the importance of sampling and cited recommendations and information from John Till in the RAC report: 1) when sampling for plutonium only test the top three centimeters of soil to avoid dilution; and, 2) the soil action level range in the report is also associated with a huge range of risk. She also noted that John Till had publicly stated that if he had known burns would be included in the risk then he would have reduced the chosen soil action level number. David said when that report first came out John Till reviewed it thoroughly with the Board. Lorraine also noted the Coalition had held a health effects workshop that had been helpful in understanding the issues surrounding soil action levels.

Jeanette Alberg said there are still slots open for Senator Allard's Capital Conference in June if anyone from the Coalition is interested in attending.

Big Picture

The Board reviewed items for discussion for future meetings. At the June meeting the Board will receive the Coalition's 2003 audit and will further discuss post-closure access restrictions to DOE lands and independent verification of sampling.

The meeting was adjourned by Karen Imbierowicz at 12:05 a.m.

Respectfully submitted by Kimberly Chleboun, Assistant Director

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